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MEGAN'S LAW AND THE PROTECTION OF THE CHILD IN THE ON-LINE AGE

Professor Nadine Strossen v. Professor Ernie Allen

Moderated by Mr. Walter Pincus

April 15, 1998

Georgetown University Law Center

PAUL KAPLAN: Good afternoon and welcome to the Third Annual American Criminal Law Review Debate. My name is Paul Kaplan. I'm the Editor-in-Chief of the *ACLR* and it's my pleasure to welcome all of you to the event this afternoon.

This debate series was inaugurated three years ago to mark the *ACLR*'s twenty-fifth anniversary at Georgetown, and this event is the centerpiece of our summer issue each year. Past events have brought a number of noted and vibrant speakers to campus, including Alan Dershowitz, Johnnie Cochran, Stephen Bright, Akhil Amar, Judge Alex Kozinski, and the late Judge Harold Rothwax. Today we are very pleased to add to those ranks once again.

To introduce today's participants to you, I'd like to turn over the event to the organizer of this debate, the *ACLR*'s Executive Editor, Robert Kwak.

ROBERT KWAK: Thank you. My name is Robert Kwak and I'm the Executive Editor of the *American Criminal Law Review*. On behalf of the Journal let me also welcome our distinguished speakers, students, faculty, and members of the administration to our annual debate, this year entitled "Megan's Law and the Protection of the Child in the On-Line Age."

Before I introduce today's participants, a word about our format. Our moderator will direct each question to one participant. He or she will have five minutes to respond, and our other speaker will have three minutes for rebuttal. At the end of the debate each participant will have five minutes to make a closing statement. I now have the distinct privilege of introducing our distinguished guests.

Ernie Allen is the co-founder, president, and CEO of the National Center for Missing & Exploited Children. Based in Arlington, the National Center is a private, non-profit organization which has aided in the recovery of close to thirty-nine thousand missing and abducted children. In addition, his organization helps to train local law enforcement to combat child abduction and exploitation, operate the child pornography tip line in cooperation with the United States Postal Service, and has recently established the Cyber Tip Line, allowing individuals to report incidents of child pornography and sexual exploitation through current on-line services.

Prior to his current post, Mr. Allen worked in public service in his native Kentucky as Director of Public Health and Safety for the city of Louisville, and

Director of the Louisville Jefferson County Crime Commission. Mr. Allen, a graduate of the University of Louisville and the University of Louisville School of Law is a member of the Kentucky Bar. In addition to teaching at his alma mater, he has held faculty positions at the University of Kentucky, Indiana University, and has served as visiting faculty at Northeastern and the University of Wisconsin. We are honored to have him here today.

Debating against Mr. Allen is Ms. Nadine Strossen, President of the American Civil Liberties Union. Founded in 1920, the ACLU is considered the nation's foremost advocate of individual rights. It has been involved in some of the most famous and infamous litigation in our nation's history, including the *Scopes* anti-evolution case, the forced relocation of Japanese-Americans during World War II, and most recently in overturning the Communications Decency Act. Ms. Strossen was elected to her current position with the ACLU in 1991 after serving as general counsel to the organization since 1986.

In addition to her duties at the ACLU, she is a professor of law at New York Law School, where she teaches constitutional law and international human rights. She is the author of numerous articles and books, including *Defending Pornography: Free Speech, Sex, and the Fight for Women's Rights*. A native of Minneapolis, Professor Strossen graduated with high honors from Harvard Law School, where she was an editor of the *Law Review*.

Finally, our moderator today is Walter Pincus, senior correspondent for the *Washington Post*. In his four decades in journalism he has worked for a variety of major newspapers, television networks, and has served as the Executive Editor for the *New Republic*. Mr. Pincus has covered some of the most important stories of the last half of the twentieth century for the *Washington Post*, including the Watergate hearings, the hostage crisis in Iran, the Iran-Contra Affair, and the Aldridge Ames espionage case. In 1981 he received an Emmy for writing on a CBS News documentary series on defense of the United States.

In addition to his responsibility as a journalist, Mr. Pincus serves as a consultant to the Washington Post Corporation, where he's helping to steer the newspaper into the non-print ventures of television and the World Wide Web. A graduate of Yale University, Mr. Pincus is currently a student here at Georgetown in the Law Center's evening division. It is a pleasure to have all three participants join us today and, without further ado, I turn the lectern over to Mr. Walter Pincus.

WALTER PINCUS: Lecturing instead of listening here: It's a new event.

In late July of 1994 a seven-year old New York girl named Megan Kanka was abducted, raped, and murdered by a twice-convicted sex offender who, unknown to her parents, lived just across the street with two other men who had been convicted of sex offenses. Public outrage about Megan's murder was immediate, intense, and inevitably political. Within two weeks New Jersey's governor and the State General Assembly were considering bills for registration and community notification. By October, the Governor had signed the registration and community

notification laws, which had quickly passed both the State Senate and General Assembly.

The horror of the event had been carried into every home in the country, by television, by radio, and by print. The resultant fear within every household with young children created a political wildfire. Similar laws were rapidly passed in other states, so that by the time the first court challenge to Megan's Law reached New Jersey's courts in 1996, forty-nine states, according to a recent *Washington Post* article, had adopted similar sex offender registration laws, and thirty-seven had maintained some form of community notification program.

Congress had its own version, which President Clinton signed in May of 1996. Last year, the Third Circuit Court of Appeals rejected arguments that Megan's Law violated constitutional guarantees against double jeopardy and ex post facto punishment. Registration and notification were approved. One court decision said the danger of recidivism requires a system of registration which will permit law enforcement officials to identify previous offenders and alert the public, when necessary, for public safety. It rejected the notion that the law was punitive against convicted sex offenders. The dissenting judge, however, said it was punitive, notwithstanding the Legislature's subjective intent to the contrary. Early this year the Supreme Court refused to hear an appeal on the New Jersey decisions. So Megan's Law as passed, and modified by court decisions, is enforced.

We hope today through discussion and debate, to allow you to understand the pros and cons of the laws, as well as the conflicts inherent in the implementation of them. These are untested laws. They exist in widely different forms throughout the country, but they were put together out of honest fears.

Not for the first time in our history will laws reduce the rights of some—in this case, the over one hundred seventy-five thousand classified as sexual offenders—in the name of protecting others. We'll focus on various forms of notification adopted in jurisdictions around the country, including not only distribution of handbills, law enforcement announcements, publication of notices, but the newer techniques of CD-ROM, the Internet, and 900 telephone numbers.

You've heard how the process will begin. I will now start with a question for Mr. Allen.

Megan's Law statutes have been justified as a necessary means of protecting the public from a group of individuals who may be likely to repeat their crimes. These laws have also been attacked as a way to continue punishing offenders after they've served their sentences. What do you say is the purpose of Megan's Law? Do these laws protect the public or punish offenders?

ERNIE ALLEN: Mr. Pincus, these laws protect the public. That is their purpose. They are not punitive; they are regulatory. We are dealing with a category of offenders who represent the highest risk to the community, and particularly, to the most vulnerable sections of the community.

Let me try to provide a little perspective. Megan's Law is one element of

comprehensive state sex offender policy. That policy includes aggressive enforcement, prosecution, meaningful sentencing, treatment as a matter of opportunity, not right, and then follow-up in the community for these released offenders. Follow-up includes registration for all convicted offenders and notification for the most serious of those offenders.

Now, a question I suppose one could ask is “why sex offenders?” Well, our view is that sex offenders are different. We would not support, and do not support such approaches and such legislation for auto thieves or bad check artists, but sex offenders are different. Sex offenders create enormous fear among the public. The nature of their act conveys a kind of psychological menace or harm. Sex offenders prey upon the most vulnerable segments of our population.

The majority of the victims of America’s sex offenders are kids, and research has shown that a significant subset of the sex offender population represents the highest risk of reoffense. They are coming back into our communities. Therefore, is it not appropriate that government, as an exercise of its legitimate public purpose of maintaining public health and safety, should provide that extra measure of protection to communities, to people at risk?

Now, the concept is simple, and the numbers have evolved since that *Washington Post* article. Today, fifty states have sex offender registry laws requiring every convicted sex offender to register their presence in the community with local law enforcement. Today, forty-five states have enacted some version of community notification, or Megan’s Law. It is our view that these laws are not punitive. Criminal history is already public record. However, historically, the public’s not been able to get to it and doesn’t know to ask for it. This is a legitimate exercise of state power. There is no question that there is some invasion of that convicted sex offender’s privacy, but it’s important for people to understand that only the most serious offenders are subjected to the broadest kind of public and community notification.

The standard in the model statutes that are being enacted across the country is that offenders are assessed based upon their level of risk. With every offender required to register with law enforcement, only the most serious offender is subject to community notification. We believe there is a rational basis for such distinctions and that these laws are regulatory and not punitive. Any stigma that flows from this notification is a product not of the registration and notification, but of the criminal offenses for which these offenders have been convicted. Megan’s Law’s purpose is to protect, not to punish.

NADINE STROSSEN: Well, certainly the purpose of all *criminal* laws is also to protect, and I think it’s very interesting that Mr. Allen has stressed the fact that these laws we’re discussing apply to convicted offenders. That is precisely the basis for singling them out. I think it’s an exercise in legal fiction to label as “non-punitive” a law that clearly has a punitive effect—imposing a mark of Cain or a scarlet letter upon one selected group of offenders who have served out their

time, let me emphasize that.

Such a law is inconsistent with a whole range of constitutional guarantees, including the prohibition against *ex post facto* or retroactive punishments and double jeopardy. The reason why advocates of these laws strain so mightily to put the label "regulatory" upon them is precisely to escape the constitutional guarantees that go with our criminal justice process.

Now, I want to stress, these are people who have committed very serious crimes. The appropriate way to deal with those crimes is to prosecute them, to punish them to the full extent of the law. If we feel that they need additional punishment, or if we feel that they need additional treatment or rehabilitation, that has to be done within the context of the criminal justice system.

I have to emphasize, I don't think we have to make a trade-off here between the constitutionally-guaranteed rights of all citizens, including those who are convicted of crimes, on the one hand, and protecting our communities and our children, on the other hand. One of the reasons why the ACLU objects to these laws is we think they are as ineffective as they are unconstitutional. They give the community a false sense of security; they divert resources away from constructive measures, measures such as those that are pursued by Mr. Allen's organization to actually prevent and educate in a more meaningful sense.

WALTER PINCUS: If I can pick it up from there, if you say the idea of community notification doesn't work, that there is a perception that there's a high risk with these people in the community, what's your formula for protecting people with children?

NADINE STROSSEN: You say there's a perception of a high risk of reoffense, and I'm glad you used the word "perception," because public perception and political statements about the likelihood of reoffense have been grossly exaggerated. The National Center for Institutions and Alternatives has recently released a study that reviews the meta-analyses that have been done of recidivism rates. The recidivism rates of sex offenders are actually quite low, and lower than those of any offenders other than murder. I say that because we are going down a slippery slope here. If the rationale that is asserted for imposing additional punishments on sex offenders, including registration and prolonged incarceration, if those rationales are based on a notion of likelihood or possibility of committing crimes again, then I think we are talking about a radical change in our entire criminal justice system.

Now, what do I propose we do that would provide meaningful and constitutionally acceptable protection for our communities, which they certainly deserve? One approach is, as I already indicated, to use the criminal justice system. There is no reason why legislatures cannot extend the amount of incarceration, cannot enact habitual offender statutes so that repeat offenders would be subject to longer incarceration.

Most importantly, the professionals who work with sex offenders have argued

that there are many treatment modalities that offer great promise. Unfortunately, only a tiny percentage of people who are convicted of sex offenses now are receiving any kind of treatment or rehabilitation while they are incarcerated. You know, to release them to the community and to say, “Well, we’re going to warn you about this person who is still dangerous, but we’re not going to do anything to treat that person, either within prison or outside of prison,” that’s like just telling the community that we’ve got a poisoned water supply. We’re notifying you about it, but we’re not doing anything to deal with the underlying harm.

So, that’s what I would say in terms of the perpetrators—let’s treat them, let’s incarcerate them, but let’s not pretend that we are releasing them and then in fact continue life-long punishment in one fashion or another.

From the perspective of children and others in our society, how do we meaningfully protect them? Unfortunately, it’s not by notifying them of the tiny percentage of sex offenders who have actually been convicted and released. Every study shows, sadly, tragically, that about eighty percent of all sex offenses, including against children, are committed not by strangers, not by people who have been convicted and released, but rather by people who have never been arrested or prosecuted, and who are even within their own families. Unfortunately, it is a sad reality that if we want our children to be safe, we have to educate them about the dangers of sex abuse, we have to warn them against contact, unwanted contact, with every adult, including those—indeed, particularly those—that they know and trust.

And here is something where I know from having read information from Mr. Allen’s fine organization: they agree. They have argued that it gives a false sense of security to focus on stranger danger rather than comprehensive programs of educating all children and all parents, through the homes and through the schools, about exercising caution when dealing with any adult, regardless of whether you have been specifically warned about that particular person.

ERNIE ALLEN: Let me briefly rebut. I agree with a lot of that. Certainly I agree with the premise that the stranger danger aspect is a myth, and you are right, Professor Strossen. However, it’s important to note that even though seventy to ninety percent of those who prey upon children are not strangers in the eye and the mind of the child, neither are they necessarily family members. HHS research established that only one-third to one-half of sexual abuse cases against girls are perpetrated by family members and only ten to twenty percent of those against boys. Jesse Timmendequas was not a pure stranger to Megan Kanka. He was her neighbor. This whole premise of the risk to kids from people they know is one of the key reasons why Megan’s Law is so important. It’s one of the key reasons why we need to know the people who are coming into day-care centers and working in schools and living on the block.

Second, and I don’t mean to get into a statistical quarrel, but let me respond briefly on the issue of recidivism and on the issue of extent of the problem. Justice

Department data indicate that six out of every ten convicted child molesters has a prior conviction, prior history. One out of every four has a history of violent sexual offenses. Forty-eight percent of convicted sex offenders in America's prisons will be arrested for a felony or serious misdemeanor within three years of their release. Of the quarter of a million sex offenders currently under the care and control of correctional agencies in the United States, sixty percent of them today are in the community, and virtually all of them are coming back to the community. The reality is Megan's Law is not a panacea. But don't we owe that little extra measure of protection and information to families potentially faced with an offender who could represent a threat to them and their child and their community? Again, Megan's Law focuses only on the most serious risks, not on everybody.

WALTER PINCUS: States define "sex offender" in various ways. For example, under some state statutes "sex offender" is defined as any individual who commits sexual assault or endangers the welfare of the child. Other statutes include within their definition individuals convicted of consensual sodomy. Who should define what offenders are covered by Megan's Law? What should the definition be?

ERNIE ALLEN: Mr. Pincus, the answer to who should define it is the legislative body of each individual state, under our Tenth Amendment premise of leaving those decisions to them. Now, we share the concerns and the implications of your question. I think it's important to understand that Megan's Law is new law. Most states have enacted these statutes within the past two years, and one of the great problems, as you indicated in your introductory remarks, is the lack of uniformity.

We, as an organization, are working very hard to try to bring about greater uniformity and greater consistency from state to state. There are federal guidelines. Congress provides guidelines for states in terms of what the covered offenses should be. And clearly we think those offenses should be proscribed sexual offenses against children, including kidnapping and false imprisonment, criminal sexual conduct, solicitation of a minor for a sexual performance, for prostitution and rape and those offenses that speak to sexually-violent predators.

However, even with those kinds of statutory inconsistencies and the current problems we face, I think it's important to focus on the processes that are developing and that a lot of us are arguing need to be in place. For example, there are some model states, Minnesota is one, Washington State is one, that have established levels of risk. That process begins with an end-of-sentence review panel in which a multi-disciplinary group of professionals, including corrections and mental health professionals, take a look at the totality of the issues affecting this particular offender.

They look at his prior history. They look at the nature of the offenses, the age of his victims, any violence associated with it. They look at the prospects and the risks associated with reoffense. They look at offender characteristics, whether he has participated in treatment, how he's performed in prison. They look at whether

he has community supports and resources, whether he has neighborhood or family or other kinds of employment prospects when he gets out. They look at what he says, and an astounding, an alarming number of these offenders say, "Yeah, if you let me go, I may do it again; I'm not sure I can control my behavior." They look at personal traits and characteristics like age and whether he has debilitating illnesses that affect that release decision.

Based upon that process, and this is one that we think ought to be in place across America, they make a judgment, they assign a rating that determines this offender's level of risk. The low-risk offenders are subject only to the registration requirement. They register their presence with law enforcement in that community. The moderate-risk offenders are subject to notification only in a very targeted way: to schools, to community organizations, but not in a public sense. And only the highest risk, or level three offenders, are subject to the broadest kind of notification.

We think that is a model that works. All sex offenders are not alike. It's a way to minimize the potential intrusion on a sex offender's privacy. And my response to your question, Mr. Pincus, in the circumstance that you cite in which consenting adult statutes would be included on this list under this process is that, it is virtually inconceivable that community notification would be made in such a case.

We'd like to see greater uniformity. We don't see the need for those kinds of statutes to be in play. But even with them, these processes are very unlikely to intrude on the individual privacy of those offenders, other than requiring them to register with law enforcement.

WALTER PINCUS: If I can add one point to that, New Jersey has registration every three months for fifteen years. Is that a rational approach?

ERNIE ALLEN: I think one of the risks is we don't want to create such a massive bureaucracy that the bureaucracy impedes on common sense. I think every three months is probably too frequent.

Now, let me say we think, frankly, that the California registration law has some merit, which is a lifetime registration law. Most of the new laws are ten-year requirements for registration with the potential to challenge or revisit. The reason we think that's so important is that recidivism and treatment research indicates that for a certain category of offender, for the traditional pedophile offender, this is a life-long problem. They may not re-offend periodically, but treatment research shows that even when an offender is caught and prosecuted at a youthful age and treated, there is still a propensity for that behavior to appear far later in life.

NADINE STROSSEN: Well, that shows the ongoing importance of treatment, and it seems to me by branding somebody as a pariah, you are very likely—as all mental health organizations have pointed out in testifying against this law—you are very likely to drive that person away from treatment, away from the kind of

family support structure, away from the kind of job support structure that is most likely to increase that person's chances of reintegrating productively into society.

I think it's quite ironic that Mr. Allen cites the three states that he mentioned as models of how this process of supposedly selecting the most dangerous offenders is working. The three states he mentioned are California, Minnesota, and Washington. The actual experiences in those states, I think, afford us no ground for celebration in terms of human rights—and that means both the human rights of the convicted offender who has served his time and the human right to safety for the rest of us.

Take California, for example. In California, for the first two years that its revamped version of Megan's Law was in effect (I say "revamped" because California has had sex offender registration since the 1940s), it was enforced upon everybody who had ever been convicted of any sex offense, including consensual sodomy between adults, including statutory rape, at a time that the laws on those subjects were still in effect, even though those acts are not crimes now. People who were convicted back in the 1940s and '50s, including in sting operations against gay men, have had to register and have been subject to community notification. Many of them have had their lives destroyed, their marriages destroyed, and finally came to the ACLU. Fortunately, we were able to persuade the California legislature to amend the law.

But that's not an aberration. The Third Circuit case that's been alluded to from New Jersey involved a man named Alexander Artway. His conviction was for having consensual sodomy with an adult woman. At the time that had happened, many years ago, that was a crime in New Jersey. So, you know, it reminds me a little bit of Justice Potter Stewart's famous epigram about pornography: "I may not be able to define it, but I know it when I see it." Well, these states are each seeing a different "it" in terms of sexual offenses that they consider so heinous and so dangerous that they are subjecting people who were convicted of those crimes—including many, many years ago—to lifelong registration and notification procedures.

In terms of being able to predict who is the most dangerous, the professional literature indicates that even the best trained experts are wrong most of the time, more than fifty percent of the time. Worse yet, in New Jersey, for example, it is the prosecutor who is deemed to be an expert. And let me submit to you, no matter who is making that determination, there is such an enormous incentive to find anybody being evaluated—who, after all, by definition, has been convicted of a heinous sex crime—there is such an enormous pressure not to release that person without some kind of notification. I'm not surprised by what's happened in my state of New York, and I think it's typical, it's going to happen everywhere: that the vast, vast, vast majority of all sex offenders are labeled as the highest category of risk.

WALTER PINCUS: Accepting the fact that you don't believe in notification in

these cases, the fact is we have a law. Define what you would like to see done, given the fact that there is registration, and notification becomes a second part of it. What's the least restrictive way to enforce the kinds of laws that clearly the public wants on the books?

NADINE STROSSEN: Well, the least restrictive would obviously be registration only with police, and in fact, the ACLU has not opposed those kinds of registration requirements, so long as there are certain basic procedural protections, such as making sure that you've got the right person and making sure that you are not talking about offenses such as consensual sodomy. In fact, the purpose of the registration statutes that have existed for a while, including the one in California, was to aid *law enforcement officers* in monitoring and, in the worst-case scenario, if there actually is a crime, to look for a likely offender.

The difference with the community notification is that it removes or displaces responsibility from law enforcement into citizens' hands. This is a plain call for vigilante "justice." That's an oxymoron, of course. And in every state in which we've had community notification, there have been tragic instances of vigilantism—in some cases, misdirected against somebody who turned out not even to have been a convicted sex offender.

If forced to choose the least intrusive kind of notification, I would say it's one aspect of what California now has, which is a 900 number that you can access to seek information about a particular person only under two conditions. One is that you specifically identify that person. In other words, this is not a dragnet request for information. You give that person's name, address, and other identifying characteristics. Second, and even more importantly, you identify a particular reason why you have a focused safety concern. For example, "I'm thinking about hiring this person as a babysitter to take care of my children in our home." I think that kind of notification is the least intrusive and also the most effective.

I keep submitting, as a constant theme of my remarks, that we don't have to make a tradeoff between protecting rights of people convicted of crime and who have served their time, on the one hand, and on the other hand protecting the community, because I believe other kinds of notification (that go beyond the "least intrusive" California approach I just described) are ineffective.

On the one hand you could have vary targeted notification, right? You could notify people who live in the immediate surroundings of the released sex offender. That means people who live beyond the immediate surroundings could potentially be easy targets, under the rationale for this law, right? Because they're not going to be on particular notice about this person. At the other end of the spectrum, the more widely dispersed you make the notice, the less impact it has in another sense, because how are the recipients going to be able to sort through all of the information? Depending on how wide the notice is, you are going to be driving the convicted sex offenders out of particular communities into other communities where there either will not be any notice at all or it will be part of such a huge list of

names that the notice is going to be meaningless. Which brings me full circle to a point I started with, which is that the only meaningful protection is to be on your guard against everybody who engages in inappropriate conduct.

ERNIE ALLEN: A couple of brief responses. First of all, on the California issue, we do not recommend California as the model, and in fact, our view is that the model for community notification is a state that allows some basic active notification. California, right now, only has a passive notification system, which allows people to query a 900 number or a CD-ROM disc or a database of registered offenders. The California law is fifty years old and is lifetime registration in terms of Mr. Pincus's point about a ten or fifteen-year life span of such a requirement.

We don't agree on the point, however, about the other models. One of the points you made about targeting the notification, frankly, we support that. The Minnesota law, for example, talks about the issue of "likely to encounter." We think it does make sense, on the basis of this levels of risk process, to target where you're going to provide the information, to target those people most likely to come into contact with this particular offender, meaning the neighborhood in which he lives, the area in which he works. We would like to preserve the ability to do broader notification with the most serious offenders. But I think there is a continuum here. There are a range of responses, including community-based treatment availability for youthful offenders or offenders who are non-violent first offenders, registration for all convicted offenders, and then targeted notification for those offenders who present the highest risk.

WALTER PINCUS: Ms. Strossen, in her response, brought up this question of the effect that notification has in a negative way. In Washington State, for example, a child rapist's house is burned down before he is to be released from prison, and there are other examples. A Texas man who was released from prison after serving eleven years for a girl's murder is driven out of six towns, denied entry to more than two hundred halfway houses. How do you answer that particular criticism, that the statutes provoke vigilante action . . . harassment?

ERNIE ALLEN: I respond in two ways. Obviously, vigilante violence and harassment are outrageous, should not be tolerated, and it's the obligation of law enforcement, the obligation of the state to deal with them, to prosecute those who violate the laws. Burning down somebody's house is just as unlawful if the occupant is a convicted sex offender as if he were anybody else. However, opponents of these laws have waved the bloody shirt from the beginning. They prophesied chaos and violence and all kinds of disruption. Well, the first Megan's Law, four years before Megan Kanka was murdered, was the Washington State law passed in 1990. There is at least, as a result of the research from the Washington State Institute of Public Policy, six years' worth of tracking data. Let me illustrate that data just to show a couple of points. During that six-year period, there were nearly ten thousand sex offenders who were registered sex offenders in the state of

Washington. Of that group, roughly nine hundred forty were subject to community notification, level two and level three, about two-thirds of their notifications were just to schools and community groups, three hundred twenty-seven of them were more broad-based community notification. Of that number there were thirty-three reported incidents of harassment. Now, that's terrible, there shouldn't be any. But thirty-three is barely three percent of the total number of offenders who were subject to community notification during those six years in the State of Washington.

Of everybody subject to community notification—ten thousand registered sex offenders—only nine hundred forty were deemed, through the process in the State of Washington, to be appropriate for notification to the community, only three hundred twenty-seven viewed as the highest-risk offenders. So, this is not a law where everybody is being exposed and everybody is being subjected. Vigilantism should not be tolerated. We don't support it, nobody supports it, and we need to make sure it doesn't happen.

One other quick point, Mr. Pincus. One of the reasons for the success of the Washington State program and the other programs in terms of minimizing the incidents of vigilantism is that those programs have community meetings, they go to the community to have discussions before the offender is ever released. They answer the questions, they tell people in the affected community who is coming into the community, what their history is. The message is, people can deal with it, they can assimilate the information, they can use it to say to their children, "Avoid where this guy lives." If the Kankas had known that, Megan would probably not have gone into her neighbor's house and been victimized. So, vigilantism has not been the level of problem that is prophesied, but we still shouldn't tolerate it.

NADINE STROSSEN: Well, it's interesting that Mr. Allen talks about the success of the Washington program and cites the Washington State Institute of Public Policy review. I'm familiar with that study too, which also shows that there is no positive impact in reducing sex crimes or recidivism as a result of this law. So, it may be successful in slightly reducing the incidents of vigilantism, but it's not successful in terms of its avowed purpose, which is to provide greater protection to the community.

I think there's a double standard here too when we say, as Mr. Allen and others have said, that to save the life of even one child it is worth whatever the downsides are of this law. Certainly, I put infinite value on the life of any human being. But that also includes human beings who are accused of crime and convicted of crime—or falsely believed to have been convicted of crime, because some of the victims of vigilantism have been completely innocent. They have been victims of mistaken identity.

You know, there's also harassment in addition to the most flagrant examples of houses being burned and people being physically assaulted. There's a lower level

of harassment here that is extremely pernicious, in terms of community safety as well as concerns about the released sex offender, who is being ostracized, being isolated, being denied jobs, being denied a place to live. This is going to drive these people underground. According to the psychological experts, it's going to minimize rather than maximize the chance that they will seek treatment, the chance that they will be safely reintegrated into our communities.

One other thing I'd like to point out in this vein: the State of California, which has the longest experience with sex registration, is completely unable to keep track of about eighty percent of all people who are supposedly registered, as a result of the notification requirement. Notification is going to decrease the likelihood that somebody is going to register and face the ostracism or vigilantism or worse, and therefore, the public safety rationale of the law is undermined.

WALTER PINCUS: I want to move on to a slightly different part of the same subject. In *Hendricks v. Kansas*, the Supreme Court upheld that State's law which allowed sex offenders to be committed to psychiatric institutions at the end of their prison terms. If a convicted criminal is released from prison, has a mental disorder rendering him dangerous to himself or others, he can be civilly confined to a mental institution by his family or the state. What is wrong with doing this in the context of sex offenders?

NADINE STROSSEN: *Kansas v. Hendricks* was a terrible decision and I'm glad I have an opportunity to comment on it, because I think it hasn't received nearly the public attention and concern that it should. What is being talked about is not our ordinary processes of civil commitment, which the Supreme Court previously has upheld. The constitutional requirements are: Number one, somebody has to be mentally ill, that is, have a dysfunction that is subject to treatment. Number two, he must be a danger to himself or others. Then the rationale for involuntary commitment is both to protect that person from himself and to protect the community by providing treatment, which maximizes the likelihood that this person is going to be rehabilitated.

That is not at all the rationale of the Kansas law or of the others that the Supreme Court has now validated. In fact, the Kansas law's legislative history, along with other such statutes, precisely says, because this person cannot be institutionalized pursuant to our normal civil commitment procedures, we have to come up with a new approach. Also, this person cannot be subject to criminal punishment, because by definition he has already completely served out his sentence. Therefore, we are going to come up with a brand new term, not at all recognized by mental health professionals—namely, a “mental disorder” or “abnormality.”

As experts testified—again, I want to cite the mental health organizations that uniformly opposed this kind of law—it's a circular definition. You basically say, the evidence of abnormality is that he's committed a crime in the past and therefore we are going to put him away, essentially for life, indefinitely. The reason I say

“essentially for life” is that he is put away until or unless the fact-finder, the judge, determines that this person is no longer a threat to the community. To make matters worse, in the *Hendricks* case, the individual was put away in a state prison facility where he was not offered any treatment at all.

Now the reason I say this case is so profoundly dangerous to our notion of liberty, our notion of justice, our notion of the purposes of the mental health system on the one hand and the prison system on the other hand, is that this is nothing short of shades of the Soviet gulag: using psychiatric hospitals as places to put away people who are deemed to be undesirable or dangerous for various reasons.

Again, I want to emphasize that if somebody is truly mentally ill and can be treated and is a danger, that person should be subject to the civil commitment procedures that already exist in Kansas and in other states. But let's not put a veneer, a rationale, a euphemism of some kind of mental health purpose onto a procedure that is in fact nothing but prolonged incarceration for the purpose of punishment and specific deterrence, removing a social undesirable from our midst, merely on the prediction of future dangerousness—a very dangerous legal fiction.

ERNIE ALLEN: Prior history many times is a very good predictor of future behavior. The reality is Leroy Hendricks has a lifetime of offending children. Leroy Hendricks has been in and out of prison his whole life and this issue is bigger than Leroy Hendricks. But let's just focus on him.

There's no question. Leroy Hendricks was a pedophile. Leroy Hendricks said, “If you let me go, I'm probably going to do it again; when I get under stress, this is what I do.” The reality is, the purpose of civil commitment is exactly as Professor Strossen articulated, it is to deal with someone who has an uncontrollable behavioral problem, as a result of mental illness or mental abnormality, who represents a danger to himself and others, who has a prior history of sexually violent pathology, sexual violent criminality, and you address the issue of does that person represent a threat to the community?

The fact that he has completed his sentence, in our view and in the Court's view, does not make it punitive. It doesn't meet the test. The traditional test of punishment is not met. It is not retribution because his prior criminal history is only used for evidentiary purposes. It's not deterrence, because if he's truly mentally ill or has a mental abnormality, the threat of commitment isn't going to deter future behavior. The issue here is, is this the sort of thing that can be done to protect the community in a very narrow slice of cases? Now, Professor Strossen talked about the controversy within the mental health community. I think it's important to note that the American Psychiatric Association views pedophilia as a condition—a mental condition—and that it is a prescribed condition in the DSM-4, the Diagnostic Manual.

WALTER PINCUS: Let me go on to just fill out one part of this. If we accept the Kansas view that the way they're recommitting people is to provide treatment to

sex offenders, shouldn't that treatment have taken place during their prison sentence, at the same time?

ERNIE ALLEN: We support treatment in the prison setting, we support treatment post-release, we support it in the community for low-risk non-violent offenders. My answer to your question is "yes." However, I think within the context that the court looked at this there are two primary purposes. The primary purpose of this civil commitment statute is to protect the community.

The second purpose is treatment. Now, one of the tough issues here is, what if you cannot successfully treat this sort of offender? Well, my argument would be, and I think there are lots of examples in the law and in public policy on this point, that the absence of a cure or the absence of a successful intervention or treatment doesn't necessarily obviate the desirability to commit the particular person. If there's some kind of dread virus and you need to quarantine someone to avoid it, they're infecting everybody else, would you say, "We don't have a cure for this; we don't have a silver bullet for this; we'll just have to let you go?" I think the point is very basic here.

Now, in the *Hendricks* decision, Justice Kennedy's concurrence, the key point that he made, was that this cannot be and should not be used to correct the results of inadequate sentencing, to modify the product of the criminal justice process. In our view, civil commitment should be used rarely and only for the most dangerous offenders. Again, if you look at this continuum of offenders, these offenders should be more dangerous than the high-risk offenders for community notification under Megan's Law.

One final point here is that this is not retribution, and Professor Strossen makes the point about being housed or committed within the prison facility. The model for these, and now nine states have them, and even Mr. Hendricks was not under the control of the state corrections agency, these offenders should be housed in the same sort of settings as other civilly committed individuals under the control of mental health systems or social services systems, and every effort should be made to treat within the limits of available treatment. These laws provide for annual reviews in order to assess their progress through treatment. The mere absence of a cure or successful treatment we don't think obviates the need or the appropriateness to have a civil commitment availability for these kinds of high-risk offenders.

NADINE STROSSEN: I'm not arguing, nor are the mental health professionals, including the American Psychiatric Association, which also opposed this (Mr. Allen cited it, so I want to underscore that), none of us is arguing that the absence of a cure is the problem here. To the contrary, we are arguing that it's the absence of a mental illness that is a problem. Kansas acknowledged in its law's legislative history that there is no mental illness here, so we're going to come up with this other new-fangled term: "disorder." Yes, it is true that pedophilia, along with alcoholism, along with too much caffeine, a whole lot of things that a lot of people do, are classified as disorders, but that is certainly not the same as a mental illness.

I think there are a lot of dangers to community safety, as well as individual rights, if we blur the distinguishing rationales that to this point had existed between the civil commitment system for mentally ill people and the criminal justice system for people who have been adjudicated guilty of having committed a criminal act in the past. The danger is that we are now moving toward a system of massive preventive detention. That is, because of an admittedly inexact, speculative prediction that a particular person is likely to commit a crime in the future, that somehow is deemed enough to detain this person forever.

It is also a diversion of resources from treating people who are actually mentally ill, and that is one of the reasons why mental health professionals oppose this.

WALTER PINCUS: I want to move on now to a new sort of area, that is "communications decency acts" that have been introduced in the Congress. The protection of children is not limited to just Megan's Law statutes. What's the most effective way to protect children from on-line dangers?

NADINE STROSSEN: Well, there are two kinds of on-line dangers. First, through on-line communications a child can actually be targeted for some kind of contact, including criminal contact, in the three-dimensional, real world. Here I really want to congratulate the National Center for Missing & Exploited Children, which has worked very effectively with the FBI, in using existing law enforcement authority and existing investigative approaches to find those people who are in fact using the Internet, as they have used other communications media in the past, to try to develop exploitative relations with, or to endanger, actual children. So we need to continue to devote law enforcement resources to actual prosecution of those who victimize actual children.

What parents have to do in this new medium is the "same old same old,"—to give their children the same kinds of warnings that they had given in previous contexts: "Don't talk to strangers; don't give out your home address; never agree to meet a stranger." It's very, very important that parents be educated and that children be educated about the dangers of actual contacts that can begin in an on-line environment.

The second kind of danger that is said to threaten children from on-line activities is the supposed harm that results from exposure to expression, to ideas, to depictions, and to words. Most concerns seem to be about sexually-oriented expression. Violence is also a concern. These are the same kinds of expression that many parents have not wanted their children to view in more traditional media.

And here again, our response is, use in the present the same tried-and-true tactics that have been used in the past. As a parent you want to maintain, certainly when you're dealing with a young child—I think the older the young person becomes, the more independent he or she is and as the Supreme Court has recognized, begins to have free-speech rights and autonomy of his or her own—but certainly when their children are at a young age, parents have a

constitutional right, as well as a responsibility, to shield the education and upbringing of their children, and they should monitor what their children do on-line.

Parents are certainly also free to choose to install any of the freely available software programs that screen out certain materials. Here, the ACLU's concern is that much of that software is extremely overbroad and misleading when it tells parents that all that's going to be filtered out is, for example, hard-core pornography; yet surveys continue to show that many of these software programs, in fact, filter out much valuable information that many concerned parents would want their children to have access to. Many of them screen out any reference whatsoever to any sexually-oriented material, even if it's artistic, even if it's got very serious value.

Last, let me say I think rather than negatively blocking or blacklisting certain materials that are deemed to be dangerous, we should instead use the same kind of affirmative approach that has worked in other media, empowering parents and children themselves to make affirmative selections of materials that they consider to be particularly valuable or useful. The American Library Association has always given recommendations and guidelines of books that are particularly educationally valuable for children of various ages. They're now performing an analogous function on-line.

ERNIE ALLEN: I agree.

(Laughter.)

WALTER PINCUS: Some of the recent . . .

NADINE STROSSEN: May I use his time?

(Laughter.)

WALTER PINCUS: Some of the recent legislation that's been introduced in Congress take two different ways of approaching the problem. One is limiting access by sexual offenders to the Internet, while another seeks to protect children from material, just sexually-explicit material that's on-line. To what extent should the responsibility be left primarily to the parents, but most importantly, what should be the role of the state?

ERNIE ALLEN: Well, as Professor Strossen indicated, we certainly think the role of the parent is very key and very important. Our organization, now for four years, has been promulgating and disseminating information to help parents catch up to this technological age and emphasizing the role of parenting, talking to your kids, finding out what your kids are involved in. We also share and support the notion of development of technology access tools and controls. Probably the one point I do want to elaborate on that she raised is the whole issue of overbroad control in terms of access to content. I think much of that is going to be a function of evolving technology, technology software tools, access controls that don't just block out

words but can now deny access to children by Web address, by URL. That evolution of technology, I think, will help us address this problem.

We do think that there's a significant role for the state, and that role is primarily in the area of enforcement. Professor Strossen mentioned this. I think one of the important things that came from the *Reno* decision is the reaffirmation by the Court that child pornography and obscenity, wherever they are, including cyberspace, is unlawful—in the adult bookstore, in the mails, in the shopping mall, or on the Internet.

What that means is that the state has to do a better job of catching up. You know, law enforcement in many ways is still in the horse-and-buggy days. It does not have the technology access and the tools to really deal with the misuse of the Internet. One of the things that we've certainly seen since the *Ferber* decision in the 1980's on child pornography—which said that child pornography is not protected speech, it's child abuse—is that that decision forced child pornography out of the adult bookstores. The United States Postal Service has cracked down on the use of the mails, and what we've seen is a sense of the Internet, or cyberspace, as a sanctuary for pedophiles who feel that they can operate with anonymity, that they can disseminate and distribute unlawful images, non-protected speech.

Law enforcement is catching up. Since the "Innocent Images" task force at the FBI and the Customs Service initiative, there are now more than four hundred convictions in the past two years. In the concurrence and the dissent to the *Reno v. ACLU* case, I thought some very important points were made: Technology will evolve. There's a fundamental challenge here and the challenge is that in the physical world you can zone areas where kids can't go and reach content. In the world of cyberspace you can't do that without also denying adults access to what is adult-allowable or appropriate information. As technology evolves through the development of gateways and other technology tools, one of the roles of the state that we see in the future and in partnership with the private industry is the development of zoning-type applications on the Internet. Clearly we need to deal more effectively with that content which is unlawful, but even with content that is protected speech. That's a challenge.

NADINE STROSSEN: Well, I'm glad that Mr. Allen referred to one of my favorite Supreme Court decisions, *Reno v. ACLU*! It gives me an opportunity to say that the ACLU did not challenge in that case the aspects of the Communications Decency Act that simply carried forward into the on-line environment prohibitions on expression that are already illegal in other kinds of communications media—namely, obscenity, child pornography, or threatening or harassing expression. But, to the extent it went beyond that, criminalizing "indecent" and "patently offensive" expression, we think it was a tragic diversion of resources, scarce law enforcement resources, from prosecution of actual on-line stalkers and those who actually abuse and exploit children.

I saw testimony that Mr. Allen gave, along with Louis Freeh, the Director of the

FBI, in the Senate last month (March, 1998) and they were talking about how they don't yet have enough resources to get enough computers to do enough training of state and local law enforcement authorities all over the country to protect actual children from actual crimes. That's because Congress, as well as state and local governments, are busily drafting and passing unconstitutional laws that go beyond obscenity and child pornography and criminalize "indecent" or "patently offensive" expression, notwithstanding our victory in the Supreme Court, as well as in a number of lower federal courts around the country.

So, for those of us who really care about protecting actual children, there is another reason to oppose censorial measures that continue to be aimed at the Internet at every level of government. That is, the waste of time and the waste of resources. That money should be going instead to the National Center for Missing & Exploited Children and to actual law enforcement.

WALTER PINCUS: Can you define what you would see as a constitutional law that deals with the problem of pornography in cyberspace?

NADINE STROSSEN: Well, I have to say I question what the "problem" of pornography in cyberspace is. Pornography is just sexually-oriented expression. Pornography by definition is constitutionally protected expression. Not all sexually-oriented expression falls within the category of "obscenity," which the Supreme Court has carved out and said this relatively narrow category is not going to receive constitutional protection. Among other things, obscenity has to lack serious literary, artistic, political or scientific value. So, when you go beyond that and talk about pornography, by definition, you are talking about constitutionally protected expression. And even concerning unprotected obscenity, recall Justice Potter Stewart's famous "definition": "I cannot define it, but I know it when I see it."

Our clients in *Reno v. ACLU*, which the government admitted would all be subject to criminal prosecution under the Communications Decency Act, included such hard-core pornographers as Planned Parenthood of America, Human Rights Watch, and my favorite, the National High School Journalism Educators Association. Why? Because they gave information about sex, because they used some graphic images or vulgar language.

There are many parents who think it is important for their kids to have access to that information. But, there seems to be such a presumption that if it has to do with sex, if you can slap that "p" word, which is an epithet, on it—"pornography"—then it must be harmful to minors. Well, the government didn't put in any evidence that any of that material that they sought to criminalize could be harmful to any minors. Conversely, we put in evidence that much of that material would be affirmatively beneficial—indeed, even life-saving, to minors. When you consider the tragic spread of HIV and other STD's among teenagers, the record-breaking numbers of unwanted teen pregnancies, and of lesbian and gay teenagers who

commit suicide, then you have to recognize that the kinds of information and opportunity to exchange with others that some of our clients provided on-line, far from endangering teens' welfare, would be positive to their welfare.

The bottom line for us, as in every other situation, is individual freedom of choice on the part of consenting adults. And with respect to families, it is a family matter to decide, consistent with their own values and educational priorities and views about sexuality, and their other views about morality and religion and so forth. They should decide what their children should have access to. It is none of the government's business.

ERNIE ALLEN: Just briefly—and I certainly will not attempt to defend the classification of the category of indecent speech as proposed by the Communications Decency Act, the Court said it was overbroad. I think the case was well made by the ACLU and others. However, a hundred million people are on the Internet today. The numbers of people of the Internet have doubled every 100 days. The capacity, the volume, the numbers of users have grown exponentially, unparalleled in American history. The challenge is most American families don't have a clue what their kids are doing on the computer. There's a false sense of security, there's a sense that my kid's in his own room, he's doing something good for his future, he's not out there where he's at risk. Kids are making those decisions, parents aren't making those decisions. And while I completely support the point that we need to emphasize parental responsibility, get parents involved in their kid's lives, it is not enough to say "families need to make those decisions and let's let kids fend for themselves." There are risks. We need to strengthen the protections for kids on-line, and the CDA might not have been the best way to do it, but we need a real dialogue to address these problems because kids are being harmed.

WALTER PINCUS: It's time for our summary and Professor Strossen, you go first.

NADINE STROSSEN: I'd like to end where I began. It posits a false choice to suggest that we have to choose between, on the one hand, safety for our children and safety for our communities, and, on the other hand, civil liberties.

Conversely, I would argue that the kinds of laws that we oppose—Megan's Law, the Kansas so-called "civil commitment" statute, the Communications Decency Act—these laws not only violate civil liberties of adults, not to mention civil liberties of minors, but also are ineffective in actually advancing safety for children and adults in our communities. They are ineffective because they are merely symbolic. They are pandering to public fears. They are creating scapegoats. They are allowing politicians to say, "I care about children; I'm doing something for children." In fact, they are at best ineffective and at worst counter-productive.

I've explained to you why Megan's Law is ineffective, giving us a false sense of security. It is counter-productive because it diverts resources from more constructive measures. I don't think that the diversion of resources issue here is at all a trivial one. As a result of procedural due process protections that the courts have

(correctly) insisted upon, and that indeed I heard Mr. Allen advocate, tremendous amounts of resources are going into an inevitably unsuccessful and futile attempt to predict which particular person in the future is going to pose a high risk of danger.

In New Jersey, for example, every single prosecutor's office has to deputize one prosecutor full-time to do nothing but handle classification hearings under Megan's Law. Likewise, one judge in every jurisdiction has to do that. Meanwhile, the statistics about the number of arrests that are made—let alone successful prosecutions and convictions—of those who commit actual crimes, are frighteningly low. We can't afford this dangerous diversion of resources.

And, I also want to emphasize that what we're talking about here are not only the rights and welfare of adults, but also the rights and welfare of children. If we turn to the on-line aspect of our debate, I think it's important to note that the Supreme Court many years ago said constitutional rights do not magically spring into being when somebody happens to attain the state-defined age of majority. Young people have been pioneers in using the Internet. I think we talk too often about the potential dangers lurking out there in cyberspace and we don't talk often enough about the wonderfully positive, liberating, enlightening, and empowering aspects of the Internet for young people. So, let's not deny them of the educational and other benefits through censorship.

I like to say that the ACLU is a pro-family organization. We simply don't believe that Big Brother is an appropriate member of "the traditional American family." So we would like to rest protection of families and children where it belongs—in their own hands, through education and through prevention; not through scapegoating, not through stigmatizing, not through depriving anybody of rights. Public safety and civil liberties can go hand-in-hand under our Constitution. Thank you.

WALTER PINCUS: Mr. Allen

ERNIE ALLEN: Thank you, Mr. Pincus. You may be shocked to hear this, but for one two-hour period on PBS, Professor Strossen and I were man and wife, and I think PBS thought that would be amusing and create some interesting conflict. But during that session, Arthur Miller, the moderator, came to me after we'd engaged in some particularly heated exchange, and said "are you still proud of her?" I made some kind of smart-aleck retort, but basically, I said, "Yes." I think it's important to note that I am glad that she does what she does and I'm glad that there's an ACLU. We at the Center and other child advocates are fiercely pro-Constitution. We believe in privacy rights. We believe in due process. We are not in favor of trashing the Constitution for any reason. I think the differences between Professor Strossen and me are very basic. They're about limits and they're about balance.

Our view is that these freedoms are not absolute. Our view is that in the case of convicted offenders who've established a pattern of behavior and who represent a

threat to the public—that it is not unreasonable to limit their privacy rights a little bit, to carve away in the more compelling public interest.

Let me talk about that balance. I'm glad the ACLU defends the rights of convicted child molesters and others, that they defend and advocate for the rights of the most difficult to advocate and the most difficult to defend. But there's balance in play here. Let me try to show you briefly what's at stake, balanced against the privacy rights of a convicted child molester. Sixty-one percent of the rape victims in America are less than eighteen, twenty-nine percent less than eleven. A majority of the victims of sex offenses in America are kids. Two-thirds of the sex offenders in American prisons today committed their offenses against children. We talked about the California sex offender registry. There are seventy thousand registered sex offenders in California today. I asked the Attorney General of California how many of them were convicted of offenses against kids. The answer is sixty-one percent of them. And another eighteen percent committed their offenses against kids and adults. Kids today in this country are hidden victims, and while we hope that these sex offenders are reintegrated into the community, that they stay crime-free, the reality is that the worst thing we can do is to provide them anonymity.

The worst thing that we can do is take someone out of prison and say, "Go forth and sin no more," because even the ones that are well-intentioned, and again, all sex offenders are not alike, I'm not trying to over-generalize, but even the ones that are well-intentioned come back to the communities where they have access to kids and women and they begin to fantasize, and these offenses reoccur. My point is, we're not saying, "Lock them away forever." All of them don't need to be. We are saying, in the interest of balance and reason, is it not rational and reasonable to say that, at least in the most serious cases, we can provide the information of their presence in the community to the people most likely to be affected by it?

I think that's what our debate's about. Our debate is about where you draw the lines. And we believe that there is a compelling public interest for the state to do more, to protect the most vulnerable section of our population, other than just saying to high-risk offenders who've served their time, that we hope they don't do it again, and if they do, we're going to do the best we can to catch them. Thanks.

WALTER PINCUS: Well, I just want to thank our two debaters for a lively and an illuminating discussion of really a difficult problem. Personally, I want to thank the *American Criminal Law Review* for putting this on, and for bringing the two of them together. You've done a good job. Thank you very much.

PAUL KAPLAN: To those thanks, I would very briefly add my own. To you, Professor Strossen, to you, Professor Allen, and of course, to our moderator, Walter Pincus, for what I think has really been a truly provocative and very enlightening debate today. As you know, the transcript of today's event will be published in the

American Criminal Law Review summer issue, and we look forward to sharing your views with the larger legal audience through that forum.

I'd be remiss if I did not also thank three people who really helped make today's event possible. My deepest thanks to Monica Stearns from Georgetown's Office of Journal Administration, and to the *American Criminal Law Review*'s own Willie Williams and Tiffany Olsen, and to all the members of their debate committee who worked so hard on today's project.

Finally, I would like to invite everybody here to a reception, which will begin in just a few moments on the twelfth floor of the Gewirz Student Center, as an opportunity for you to meet today's participants, and to continue this dialogue with them yourselves, one-on-one. This is an issue that has received a great deal of discussion, not only on this campus, but in offices and courts and around kitchen tables around the country. I'm sure that will continue and I hope you'll all avail yourselves of the opportunity to participate in that debate with the experts that we have with us here today. Thank you so much for joining us and have a great evening.

Thank you.

